SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. 195

ISIAH (IZELL) CHAMBERS, JACK WILLIAMSON, CHARLIE DAVIS AND WALTER WOODWARD (WOODARD),

Petitioners,

vs.

THE STATE OF FLORIDA.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF FLORIDA AND BRIEF IN SUPPORT THEREOF.

LEON A. RANSOM,
S. D. MCGILL,
THURGOOD MARSHALL,
Counsel for Petitioners.

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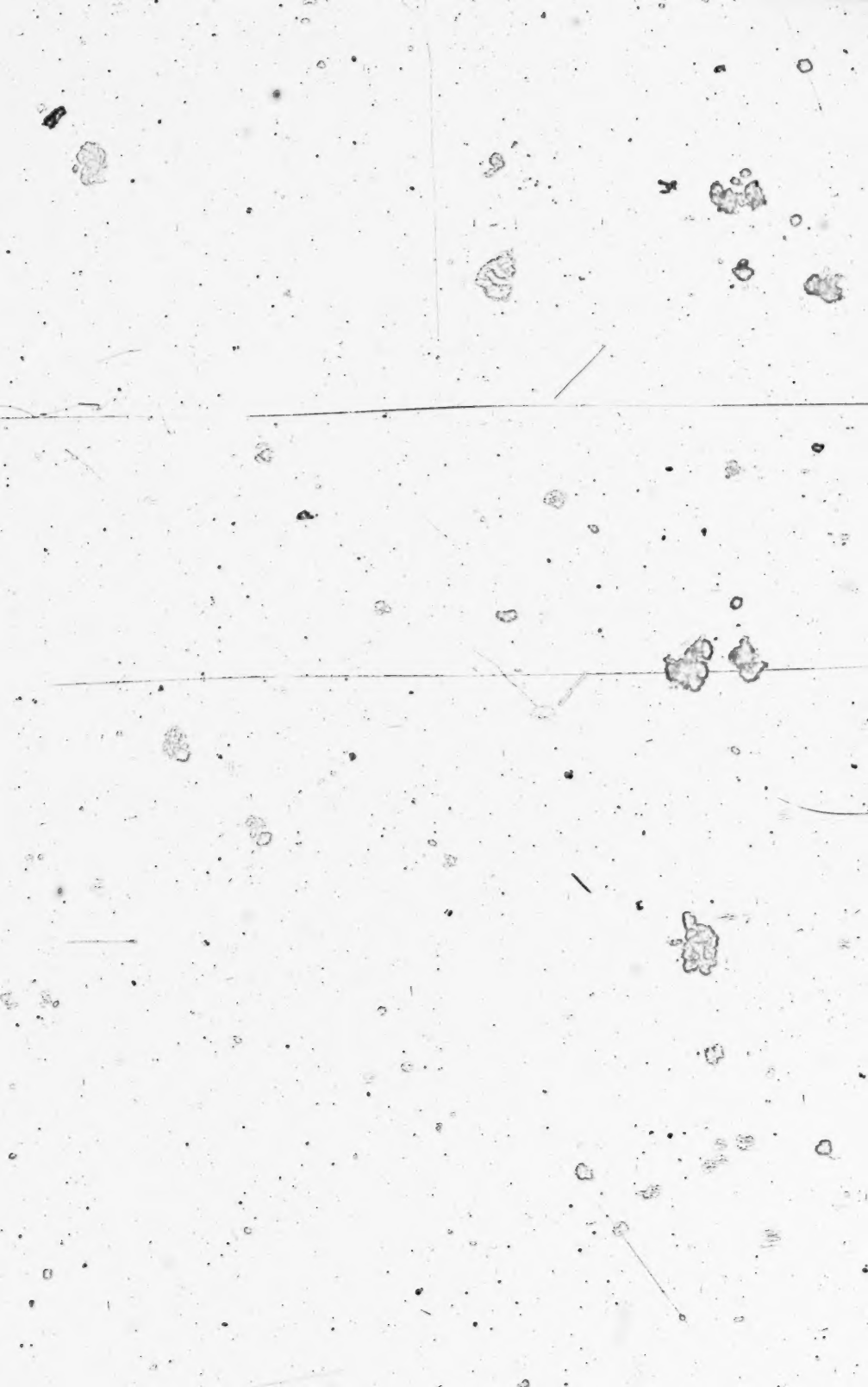

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vs.

THE STATE OF FLORIDA.

PETITION FOR WRIT OF CERTIORARI.

To the Honorable the Supreme Court of the United States:

Your petitioners, Isiah (Izell) Chambers, Jack Williamson, Charlie Davis and Walter Woodward (Woodard), respectfully show:

A.

Summary Statement of the Matter Involved.

1. PRESENT STATUS OF THE CASE.

Petitioners, Isiah (Izell) Chambers, Jack Williamson, Charlie Davis and Walter Woodward (Woodard), are now confined in the State penitentiary in the State of Florida under sentence of death for murder. Petitioners are all

young, destitute and ignorant Negroes, charged with and convicted for the murder of one Robert Darcey, a white man, in June, 1933. At the arraignment, May 24, 1933, petitioners Jack Williamson and Walter Woodward (Woodard) pleaded guilty to the indictment and petitioners Charlie Davis and Isiah (Izell) Chambers pleaded not guilty. The court (the Circuit Court of Broward County, Florida) set their trial for June 12, 1933. On that date petitioner Charlie Davis, under circumstances that will hereafter more fully appear, entered a plea of guilty, and the petitioner Isiah (Izell) Chambers was immediately put upon trial and convicted of murder in the first degree, the confession hereinafter referred to, and the testimony of the three other petitioners being used against him. On June 17, 1933 the Circuit Court of Broward County, Florida passed sentences of death upon all four of your petitioners herein.

The date of execution was fixed for August 4, 1933, but a writ of error was sued out to the Supreme Court of Florida, which, on December 19, 1933, affirmed the judgment and sentences of the Circuit Court of Broward County (see *Chambers, et al.* v. *State of Florida*, 151 So. 499). The petitioners were not represented by counsel in the Supreme Court of Florida upon the said writ of error as will more fully appear from the text of the opinion: Thereafter, upon petition properly presented, the Supreme Court of Florida permitted petitioners to file their applications in the Circuit Court of Broward County, Florida, praying the trial court to issue a writ of error *coram nobis* (*Chambers, et al.*, v. *State of Florida*, 152 So. 347). The application for a writ of error *coram nobis* came on to be heard before the Honorable George W. Tedder, Judge of the Circuit Court of Broward County, Florida, April 20, 1934. On May 2, 1934, the application was denied by said court and from this order denying the issuance of a writ of error *coram nobis* a writ

of error was sued out in the Supreme Court of Florida, which held that the issues were triable by a jury and revesed and remanded the decision of the trial court (*Chambers, et al.*, v. *State of Florida*, 158 So. 153). Thereafter this cause came on to be heard again upon the issues joined before a jury on February 21, 1935, resulting in a verdict and final judgment in favor of the respondent herein. From this final judgment a further writ of error was sued out in the Supreme Court of the State of Florida, and which, for manifest error, reversed and remanded the judgment of the trial court (*Chambers, et al.*, v. *State of Florida*, 167 So. 697).

On October 12, 1936, the cause came on to be heard again, and upon proper representations and proceedings, was transferred from the Circuit Court of Broward County to the Circuit Court of Palm Beach County, Florida, resulting in a verdict and final judgment thereon in favor of the respondent herein. From this final judgment a writ of error was sued out to the Supreme Court of Florida, which on March 3, 1939, did affirm said judgment, and did, thereafter, upon the 11th day of April, 1939, after consideration, deny petitioners' application for a rehearing therein.

2. Salient Facts.

Robert Darcey, a white man, was murdered in Pompano, Florida, a small town in Broward County, Florida, about twelve miles from Fort Lauderdale, on Saturday night, May 13, 1933 about nine o'clock. Some twenty-five or thirty Negroes of the vicinity were arrested on that night and the following day, Sunday, May 14, 1933, on suspicion. All of them were later released except your petitioners herein. Feeling among the citizens of Broward County ran high and there was talk of mob violence. Captain J. T. Williams, a convict guard, who had no official connection with the officers of Broward County, and who appears to be a volunteer, and

Sheriff Clark, of the County, removed Isiah (Izell) Chambers and Jack Williamson, two of the petitioners herein, to Miami, in Dade County, eighteen miles away, for protection. They were brought back to Fort Lauderdale to the Broward County jail the next day, however, Tuesday, May 16, where they all signed confessions on May 21, 1933, and, on May 22, 1933, were jointly indicted with the other two petitioners, Walter Woodward (Woodard) and Charlie Davis, being charged with the murder of Robert Darcey.

In support of their assignments of error that the confessions were not freely and voluntarily given, but were extorted by torture and violence, and that they were denied the benefit of counsel, all in violation of the equal protection and due process clauses of the Fourteenth Amendment to the Constitution of the United States, petitioners adduced the following evidence at the hearing herein:

Jack Williamson testified in substance that he was awakened on Sunday night, May 14, 1933, about 11 or 12 o'clock by Sheriff Bob Clark, Chief Maddox and some three or four other men (R. 15). He and the other three petitioners were handcuffed and taken to a car to which a fourth man was chained and the five of them were taken to the Fort Lauderdale jail (R. 16). The officers made them trot to the car because they said they were dodging a mob which was after the petitioners (R. 16). Upon Williamson's arrival at the jail he was taken into a room where Chief Maddox sat him in a chair, stuck a pistol in his neck and Bob Clark hit him with a pistol (R. 17). About daylight he was again taken to this room where J. T. Williams (a man weighing approximately 230 or 240 pounds) struck him with a loaded bicycle tire, knocking him out of the chair, cursing him and kicking him when he attempted to arise (R. 17). He was walked to different parts of the jail many times during that day and after dark and after that

they were taken to the jail at Miami (R. 18). They had no knowledge of where they were being taken until Sheriff Clark told a speed cop who stopped them that he was taking some Negroes to Miami to escape a mob (R. 19-20). When they reached Miami, J. T. Williams told them to "take that light son-of-a-bitch and put him in one of the death cells" (R. 20). He was returned to the Broward County jail about 2 A. M. the following morning (R. 20). About two hours after his return to Broward County he was taken from his cell and J. T. Williams again beat him over the head with the loaded bicycle tire and with his fist (R. 21). Captain Williams told him it wasn't what he wanted to say but what they told him to say (R. 22). He was walked back and forth and severely beaten all night (R. 22). He didn't sleep any that night (R. 22). The next morning he read in the paper that Frank Manuel and Mack Little had confessed to the crime (R. 22). Thursday he was taken from his cell in the morning and again in the afternoon, beaten and knocked out of the chair. Williams said, "Don't you know that some nigger has got to die for this and we just as soon it be you as any one. All we got to do is blow a long whistle and the whole mob of Pompano will be here for you in a few minutes" (R. 23). They came for him again that night and beat him and knocked him unconscious (R. 23). About daylight Thursday morning they again beat him in an effort to make him say that he knew Charlie Davis. Friday morning he denied knowing Charlie Davis and was terribly beaten (R. 23-24). Friday and Saturday he was again beaten. They walked him back and forth and beat him off and on all day Saturday (R. 24). Again he was beaten into unconsciousness (R. 24). They continued to beat him off and on and finally got a grass rope, tied it around his neck and pulled him up, beating him all the while until he was unconscious, snatching him up and telling him what to say. He couldn't remember what it was they

wanted him to say and three times this procedure was repeated (R. 25). He could hear the other prisoners yelling and he could hear the licks given them but couldn't see them (R. 25). This was continued all the week (R. 25). Then he was taken to a room across the hall where Captain Williams and the jailer had Charlie Davis, Walter Woodard, Izell Chambers and some other men whom he didn't know (R. 26). He made the desired confession because he was sure they were going to kill him; they had told him they would kill him (R. 27). The confession was made about sunrise Sunday morning (R. 27). He didn't enter a plea of guilty when he was brought into court though he had been told to do so (R. 28). Sheriff Clark and Captain Williams went to his cell early that morning and told him when the Judge asked him if he was guilty he had better say yes (R. 28). Prince Douglas, one of the trustees, visited his cell and gave him some salve to put on the places where he was cut on the back of him head where Captain Williams had hit him. Douglas put some of the salve on his head (R. 29). The wounds made by Captain Williams on Thursday night and by Bob Clark on the night he was arrested were exhibited to the jury (R. 29). Sheriff Clark inflicted a Y-shaped scar on his head (R. 30). He didn't make any confession on the night of his arrest (R. 33). He said what they told him to say about sunrise Sunday morning (R. 38). He doesn't remember now what he said because he had been carried over it many times (R. 39-40). Off and on all day Sunday Sheriff Clark and Captain Williams came to his cell and rehearsed what he was to say (R. 41). J. T. Williams did most of the beating and tied the rope around his neck (R. 43). The rope was thrown through a crack to a bar on one side and he was swung up on it (R. 43). He didn't know Charlie Davis until he met him in jail at Fort Lauderdale (R. 44). His lawyer, W. C. Mather, told him there wouldn't be any use of him giving any names (of

witnesses to prove his innocence) because they wouldn't be allowed to take the stand (R. 46).

Walter Woodard testified that at the time of his arrest he was in bed where he had been since 9 that night (R. 49). He was awakened by being tapped on the feet with a club. He was trotted out to the car without shoes and taken with five others to the Broward County Jail (R. 50). Monday afternoon he was taken before Captain Williams, Mr. Marshall the jailer, Sheriff Clark and three other men (R. 51). He was told he was lying when he said he knew nothing of the homicide and that he would have to come straight (R. 51). He was taken out several times during the week and questioned and was struck every time he went down except the first (R. 51). Sometimes his feet were stamped and he was kept without shoes the whole time, even sent to Raiford without shoes. Whenever he stated that he knew nothing of Charlie Davis or the crime, Captain Williams would stamp his feet (R. 52). He was told he didn't need shoes for the trial and was forced to walk on the cold concrete in his bare feet (R. 52). On the night of the 20th of May he was beaten (R. 53). He was stamped and brutally beaten with a club which left a scar in his side (R. 53). He was told that Jack had "come across" and he should do likewise (R. 53). He was taken out several times during the night of the 20th, and around 2 A. M., was told if he wanted to live until sunrise, it would be better to come across because Williamson had said he was one of the boys in it, but he still denied it. Captain Williams drew his gun to his head and told him if he said another time he was not there and that he did not have a part in the crime, he would kill him and throw him out of the window (R. 54). He—Captain Williams—was crying. He said that Woodard had told lies and kept him sitting up all the week and he was tired (R. 55). Mr. Clark got between Woodard and Captain Williams and Captain Williams said, "You had better take him out of here, if you

don't I will kill him" (R. 55). Captain Williams told him if he didn't confess, he would take him out to West Dixie (R. 55). Woodard agreed to say "what they wanted him to say," and the State's Attorney was sent for about one or two o'clock Saturday night (R. 55). He didn't have anything to tell Mr. Maire but realized that if he didn't tell him something, Captain Williams might kill him since he had been threatening his life all that week (R. 55). The statements he gave Mr. Maire he was told were no good and Mr. Maire tore his notes up and told Captain Williams when he got something he would come back; that it was late and he had to go back and go to bed (R. 56). Captain Williams then put the grass rope around his neck and strangled him saying that if he wasn't going to tell the truth he was going to kill him (R. 56). A second time the rope was put around his neck and twisted, strangling him. Captain Williams swearing at the time that he would kill him if he didn't say he was present (R. 57). He agreed and was taken into the room where the confessions were to be taken (R. 57). The Sheriff, J. T. Williams, Walter Clark, Mr. Maire and the deputy Clerk were all in the room awaiting the confession (R. 57). He was not represented by counsel. Counsel had been appointed but only told him to plead guilty (R. 58). Before he was taken into the court room, Walter Clark and Captain Williams came to his cell and asked him if he was going to stick to what he said, adding that if he tried to change his statement in the court room he wouldn't live until the next morning because the majority of the people in Pompano were from Georgia and believed in mob violence and they would lynch all niggers; he would turn the keys over to them (R. 59). He didn't know he had an attorney until he was informed that his attorney's name was Mr. Mather and that he had been appointed to represent him (R. 59). Mr. Mather told him the sentiment of the people of Broward County was highly against him and the best

thing he could do was to go down and plead guilty (R. 59). He confessed because he weakened under the torture and strain (R. 71). The record in the case shows that no lawyer was appointed (R. 72). During the several days between the time of his confession and Izell Chambers' trial, Captain Williams continued to threaten him, telling him what the consequences would be if he went before the jury and changed his statements (R. 73). He did not tell his lawyer about the torture through which he had gone because he had only a ten minutes' talk with him before he was brought before the Judge and was instructed by him to plead guilty and get out of the court room as soon as possible because of the sentiment of the people of that county (R. 74).

Charlie Davis testified that he was preparing for bed when Chief Maddox came to his room, told him to stand back and began searching (R. 77). He was taken to the small jail in Pompano. On Sunday morning he was taken by Sheriff Clark to the Broward County jail (R. 77). He fell asleep on a small steel bunk with no mattress and was awakened by someone kicking him (R. 77-78). He was questioned by a large man who knocked him under the bunk, when told he didn't know what he was talking about. He was knocked senseless (R. 78). The man who struck him, he later learned, was Captain Williams. The following morning he and another prisoner were tied together and taken to the jail at Fort Lauderdale (R. 79). Tuesday or Wednesday, Captain Williams and another officer hit him, the other officer striking him in the same place twice (R. 82). Later in the day he was taken to Pompano, double handcuffed to Captain Williams (R. 82). He was questioned and told he was lying when he said he didn't know anything about the other boys. Captain Williams told him he was going to know something before it was over (R. 83). Later that night he was knocked off the chair and kicked by Walter Clark when he denied knowing anything about

the other prisoners (R. 83). He was told that a mob was after him and he would be shot and made to jump out of the window (R. 83). He was beaten by Mr. Clark and told that he hadn't started. He was hit one time with a black jack (R. 83). On Saturday night Captain Williams asked Davis if he knew who he was. Davis replied that he never saw him before until he came in and beat him up. Captain Williams ordered him not to say that any more (R. 84). He told Davis that he was foreman of a chain gang camp and nobody "excuses" his word. He kicked him and told him he was going to take him to West Dixie and a man accompanying Captain Williams hit him in the same place he had been hit before with a rubber hose (R. 85). He was then at the point where he would have said anything to avoid further punishment (R. 85), Captain Williams was the man who did most of the beating (R. 85). Captain Williams started to put a rope around his neck but didn't because some one else came in (R. 86). But he told him he was going to string him up like he had done some others who were in jail (R. 86). He was threatened all Saturday night and didn't get any sleep (R. 87). Captain Williams had the prosecuting attorney come over and when he left he hit Davis and told him if he didn't say what he wanted him to say he wouldn't see daylight the next morning. Davis agreed to say what he wanted him to say, if he wouldn't hit him again or give him to the mob, which he had been told was outside (R. 87). Davis made his confession the next morning because he was told by Captain Williams that if he didn't he would either kill him himself or give him to the mob (R. 89). When he was being taken from the court room by the jailer, Captain Williams hit him and he again promised to say what he had been told (R. 90). He was afraid of Captain Williams most of all because he had beat him unmercifully (R. 91). His beatings began about 2:30 the night of the arrest (R. 93). For a week he was

questioned, kept without sleep and beaten every night (R. 95).

Izell Chambers testified that he was awakened about 11 o'clock on the night of May 14, 1933 and arrested along with three other men (R. 112). He was taken to the fourth floor of the jail at Fort Lauderdale and Virgil Wright and Chief Maddox began beating him (R. 112). On Monday night he was taken to Miami because, as he was told, a mob of fifty cars filled with men was waiting to take the lives of the petitioners (R. 113). They were taken down the fire escape and through the back of the jail (R. 113). Captain Williams said they deserved lynching (R. 113). At about 12 or 1:30 that night they were taken back to the Broward County jail and the beating was resumed (R. 114). He was told by Captain Williams that they had seen his witnesses and they told the same story he told, but they were not going to accept it (R. 115). Then they began beating him again and threatening to kill him or turn him over to the mob. He didn't get any sleep (R. 115). He showed a scar and several bruises which he said he received as a result of the beatings (R. 115). They told him he had kept them up all week and caused them to lose their sleep but they were not going to stay up another night messing with him (R. 116). He was going to confess the truth Saturday night or they would kill him or turn him over to a mob (R. 116). Captain Williams beat him, kicked him; struck him on his knees, causing them to bleed and said he would rather kill him himself than let the mob have him (R. 117). Chambers told them if they wouldn't kill him he would say 'anything they wanted him to say' (R. 117). At about 5:30 Mr. Maire came in to take what he said (R. 118). He didn't plead guilty before the Judge. Captain Williams asked him why he didn't plead guilty and upon being told that he was innocent Captain Williams told Mr. Marshall they had better take him away from there before

he killed him (R. 119). He was taken to the Miami jail and kept there for about two weeks (R. 119).

IV.

The respondent offered evidence in opposition to the petitioners' claim that the confessions were illegally obtained in substance as follows:

A. D. Marshall, the jailer, said that he was present on that Saturday night and did go and get the prisoners whenever the Sheriff told him and bring them up for questioning (R. 306). They began questioning the petitioners along about 4 o'clock Saturday afternoon. They took a recess about 6 (R. 306). Captain Williams was there all of the time when questions were asked the petitioners (R. 313-314).

Hon. Louis Maire, State's attorney, testified that he was called over to the jail that Sunday morning about 2:30. He left the jail about 3 o'clock A. M., and got some sleep and came back again at 6:30 Sunday morning, when these confessions were signed (R. 265). Walter Woodard is corroborated at this point by Mr. Maire because Woodard says that Mr. Maire refused to accept his first story that he told him in the office that morning about 3 o'clock. Mr. Maire tore his first story up and told Captain Williams that the story was no good and when they got something out of Woodard he would come back; that it was late and he had to go back and go to bed (R. 56).

Sheriff Clark's testimony in substance shows that these confessions were not freely and voluntarily given. When asked how many hours the defendants could have had sleep that night when these confessions were made, the Sheriff said:

> "Q. How many hours sleep did they have the opportunity to get that night?
>
> "A. They could have slept all night, except I would say three hours, two hours and a half or three hours.

"Q. What was the reason for bringing them out and having them returned to the cell and then later bringing them out again?

"A. Because I would question one of them, and he would tell me some story about where he was at on Saturday night, and put him back in the cell and check on that and find out that he wasn't there, he was telling me a lie about it, and then bringing him out and we would question him again, I tell him I checked on the last story he told me, tell him I checked on it, and he would tell me a different story about where he was at and what he was doing on Saturday night" (R. 276).

Again the Sheriff says that during the night's questioning he would lie down and take a nap after having some sandwiches and coffee (R. 277).

Prince Douglas, the additional State witness, testified for the first time in this case. He said he was a cook in the Broward County Jail on the Sunday morning, May 21, 1933, when these alleged confessions were made (R. 160). That he served sandwiches and coffee to Sheriff Clark and others including Captain J. T. Williams, the convict guard, all night Saturday night (R. 161). He began to serve these officers and others present in the jailer's office on the third floor of the jail about 8:30 Saturday night, and continued all night until those confessions were obtained the next morning about daylight. The petitioners were brought in at different intervals all night, questioned and cross-questioned by those to whom the cook served sandwiches and coffee (R. 163).

But, aside from the fact that the confessions relied upon for the conviction and sentencing of the petitioners herein were extorted by torture and brutality, a graver and more serious denial of due process of law (assuming for the purposes of argument that there can be one graver) appears in the fact that petitioners were denied the benefit of counsel in a proceeding in which their very lives were at stake.

The question of the appointment of counsel for defendants charged with a capital offense, when they are unable to employ counsel of their own, is a serious one. All of the authorities hold, apparently, that the accused should have the assistance of counsel before arraignment in court. Accused should have the opportunity to employ counsel of his own choosing before one is appointed, but in no case should he be arraigned to plead to a capital offense without the court has appointed counsel to represent him if he has none and is not able to employ one. In this case it is definitely settled by this record that no counsel was ever appointed by the court to represent petitioners. The nearest approach to the appointment of counsel will be found in the transcript where Mr. Griffis says that he first knew that he was to represent certain of the defendants when Judge Tedder met him on the streets and told him that he had appointed him and Mr. Mather to represent certain of the defendants. Which two of the defendants he was to represent he did not know and Judge Tedder did not tell him. Mr. Griffis says that he never talked with his clients or saw them before the day they were arraigned, May 24, 1933 (R. 137). He had notice only the day before of his appointment (R. 137-138). He learned from the Clerk whom he was to represent; the judge never told him (R. 138). Charlie Davis, one of the petitioners Attorney Griffis represented, pleaded Not Guilty at the arraignment. A day or so later, however, Charlie Davis changed his plea from Not Guilty to Guilty without ever having consulted his attorney, and strangely enough, the attorney never knew that the client wanted to change his plea until Captain Williams, the convict guard volunteer, came to his office and told him that *his* client wanted to change his plea (R. 139).

W. C. Mathers was told by Judge Tedder, according to his testimony, some ten (10) days before the indictment of the defendants that he wanted him to represent two of the

defendants (R. 190). Mr. Mather did not know which two of the defendants he was to represent and the Judge had not told him (R. 192).

A mere reading of the testimony of both of these lawyers shows that they were not appointed by any court order so that they could definitely know who they were to represent and certainly they were not appointed in time to seasonably consult with their clients in order to prepare any sort of defense as contemplated by the statutes of Florida and the Constitutions of the State of Florida and of the United States in such cases. The defendants had a constitutional right to consult with their attorneys and unless the attorneys knew definitely whom they were to represent and the clients knew definitely who their lawyers were, and in time to seasonably prepare for the pleas and trials, they were denied the constitutional rights guaranteed them under the Fourteenth Amendment to the Constitution of the United States.

B.

Reasons Relied on for the Allowance of the Writ.

1. The conviction of petitioners upon confessions and pleas of guilty extorted by violence and torture, both of which were obtained by agents and officers of the State of Florida while acting in their official capacities, is a denial of the equal protection and due process of the law guaranteed by the Fourteenth Amendment to the Constitution of the United States.

2. The failure to give petitioners opportunity to employ counsel of their own, and the appointment of counsel (if such there was) who failed to seasonably and properly consult with and advise petitioners of their rights in the premises and to adequately represent them in the proceedings below is a denial to the petitioners herein of the due process

of law guaranteed them and each of them by the Fourteenth Amendment to the Constitution of the United States.

Each of the above questions were seasonably and properly raised in the trial court below and both the Circuit Court of Palm Beach County, Florida and the Supreme Court of the State of Florida denied the Federal questions involved. Petitioners have exhausted their remedies in the state courts of the State of Florida.

In support of the foregoing grounds of application your petitioners submit the accompanying brief setting forth in detail the precise facts and arguments applicable thereto. Petitioners further state that this application is not filed for the purposes of delay.

Wherefore your petitioners pray that this Court, pursuant to United States Judicial Code, Section 237b, as amended by Act of February 13, 1925, 43 Stat. 937, issue a Writ of Certiorari to revise the judgment of the Supreme Court of the State of Florida, affirming the decision of the Circuit Court of Palm Beach County, Florida, dismissing your petitioners' application for a writ of error *coram nobis*, as aforesaid.

All of which is respectfully submitted this 11th day of July, 1939.

ISIAH (IZELL) CHAMBERS,
JACK WILLIAMSON,
CHARLIE DAVIS, and
WALTER WOODWARD (WOODARD),
Petitioners.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. 195

ISIAH (IZELL) CHAMBERS, JACK WILLIAMSON, CHARLIE DAVIS AND WALTER WOODWARD (WOODARD), *Petitioners,*

vs.

THE STATE OF FLORIDA.

BRIEF IN SUPPORT OF THE PETITION FOR WRIT OF CERTIORARI.

I.

Opinion of the Supreme Court of Florida.

The opinion of the Supreme Court of the State of Florida has not been officially reported. A certified copy thereof is found in the record, pages 350-360. A Motion for Rehearing was denied in a memorandum opinion appearing in the record, p. 360.

II.

1.

Jurisdiction.

The statutory provision is United States Judicial Code, Section 237b, as amended February 13, 1925, 43 Stat. 937.

2.

The date of judgment is March 3, 1939, on which date the Supreme Court of the State of Florida affirmed the order and judgment of the Circuit Court of Palm Beach County, Florida, denying petitioners' application for a writ of error *coram nobis* (R. 381-389). A petition for rehearing was filed and denied on April 11, 1939 (R. 360, 367).

3.

That the nature of the case and the rulings below bring the case within the jurisdictional provisions of Section 237b, *supra*, appears from the following:

A.

The petitioners herein specifically raised a Federal question in their assignments of error in this cause (R. 1) which was denied by the respondent. Where convictions and sentences of death rest solely upon confessions shown to have been extorted from prisoners by the officers having them in charge such acts violate the Fourteenth Amendment to the Constitution of the United States in that it denies the petitioners their rights thereunder. The claim of constitutional rights was also raised by petitioners specifically at the trial in this cause, and the trial court in overruling petitioners' motion for a new trial expressly recognized and passed upon such Federal question (R. 329). Again the Federal questions were specifically raised in this cause when the case was taken to the Supreme Court of Florida by Assignment of Error, No. 12 (R. 334). The Supreme Court of Florida duly considered and passed upon the Federal question adversely to the petitioners, as will more fully appear from the opinion of the court (R. 351). The claims that were made by your petitioners and denied by the State courts are:

That they were denied the due process of law and the equal protection of the law by the Circuit Court of Broward County guaranteed by the Fourteenth Amendment to the Constitution of the United States in that:

(a) They were not given a fair, impartial and deliberate trial;

(b) They were denied the right of counsel with the accustomed incidents of consultation and preparation for arraignment and trial as provided by law;

(c) The alleged confessions of petitioners were obtained by force and duress and were inadmissible as such;

(d) The pleas of guilty were likewise made under such circumstances as to render them illegal and insufficient, being entered shortly after their extra-judicial confessions, illegally obtained only a short time before said pleas were entered.

4.

The following cases, among others, sustain the jurisdiction of the court:

Powell v. *Alabama*, 287 U. S. 45, established that the failure to give reasonable time to secure counsel to ignorant and illiterate youths charged with a crime punishable by death is a denial of due process and the assignment of counsel at such a time and under such circumstances as to preclude the giving of effective aid is a denial of due process of law. See also, *Strauder* v. *West Virginia*, 100 U. S. 303; *Neal* v. *Delaware*, 103 U. S. 370; and *Brown* v. *Mississippi*, 297 U. S. 278, all of which are authority for the view that the duty of maintaining constitutional rights of a person on trial for his life transcends mere rules of procedure. And in *Johnson* v. *Zerbst*, 304 U. S. 456, it was stated that the denial of constitutional rights to the accused person deprives the trial court of jurisdiction.

In *Brown v. Mississippi, supra*, it was held that the use of confessions obtained by coercion, brutality and violence as a basis for convictions and sentences constituted a denial of due process. See also, to the same effect, *Moore* v. *Dempsey*, 261 U. S. 86, and *Powell* v. *Alabama, supra.*

III.

Statement of the Case.

Robert Darcey, a white man, was murdered in Pompano, Florida, a little town in Broward County, about twelve miles from Fort Lauderdale, on Saturday night, May 13, 1933, about nine o'clock. There were some 25 or 30 Negroes arrested on suspicion and put in jail that same night and the following day, Sunday, May 14, all of whom were later discharged except the four petitioners herein.

Feeling among the citizens of Broward County ran high and there was talk of mob violence. Captain J. T. Williams and Sheriff Clark took no chance and on Monday, May 15, 1933, they took Izell Chambers and Jack Williamson, two of the petitioners herein, to Miami in Dade County, eighteen miles away, for protection. They were brought back to Fort Lauderdale to the Broward County jail the next day, however, Tuesday, May 16, where they all signed confessions May 21, 1933, and on May 22, 1933, were jointly indicted with the other two petitioners, Walter Woodward and Charlie Davis, charged with the murder of Darcey.

When these petitioners were arraigned in court two days later, May 24, 1933, Jack Williamson and Walter Woodward pleaded guilty to the indictment while Charlie Davis and Izell Chambers pleaded not guilty to the indictment and the court set their cases for trial June 12, 1933. At the trial June 12, 1933, the State's Attorney stated to the court that all of the defendants had pleaded guilty to the indictments except Izell Chambers, who was immediately tried

and convicted of murder in the first degree, the confession signed by him May 21, 1933, being used in evidence against him, and the other three defendants testifying against him also. On June 17, 1933, the court passed sentences of death upon Izell Chambers, who had been tried and found guilty, and on the other three defendants who had pleaded guilty to the indictments.

A day was fixed by the Governor of the State for the executions, but on August 4, 1933, the Supreme Court of Florida issued its writ of error to the Circuit Court of Broward County, Florida, and upon a review of the case thus made upon said writ of error, the judgments were affirmed December 19, 1933 (*Chambers et al., v. State of Florida,* 151 So. 499). The petitioners were not represented by counsel in the Supreme Court upon the said writ of error as will more fully appear from the text of the opinion.

Later, upon petition duly presented, the Supreme Court of Florida allowed petitioners to file their applications in the Circuit Court of Broward County, Florida, praying the trial judge to issue a writ of error *coram nobis* (*Chambers et al.* v. *State of Florida,* 152 So. 347).

The petitioners then filed their application before the trial judge for the issuance of a writ of error *coram nobis,* which said petition came on to be heard before the Honorable George W. Tedder, Judge of the Circuit Court of Broward County on April 20, 1934, and on May 2, 1934, the application for the writ of error *coram nobis* was denied by order of said judge and from the order denying the petitioners' application for the writ of error *coram nobis,* a writ of error was sued out in the Supreme Court of the State of Florida (*Chambers et al.* v. *State of Florida,* 158 So. 153).

The cause being reversed, and issue again being joined therein, the matter came on for trial another time on February 21, 1935, resulting in a jury verdict adverse to petitioners and a subsequent final judgment on said verdict.

From this final judgment a further writ of error was sued out and upon consideration thereof said fi al judgment was reversed (*Chambers et al.* v. *State of Florida*, 167 So. 697).

On October 12, 1936, issue having again being joined in this cause and the same having been transferred by proper proceedings from the Circuit Court of Broward County, Florida, to the Circuit Court of Palm Beach County, Florida, the matter again came on for trial. At this hearing the verdict of the jury was returned against the petitioners herein and later a final judgment was entered thereon in accordance with said jury verdict. Error was again prosecuted to the Supreme Court of the State of Florida, which, on March 3, 1939, affirmed the judgment of the Circuit Court of Palm Beach County, Florida, and, on April 11, 1939, denied a petition for rehearing therein.

This petition for certiorari is based upon the said final judgment of the Supreme Court of the State of Florida and its denial of a rehearing thereon (R. 350 *et seq.*).

The majority opinion of the said Supreme Court of the State of Florida held in substance that the confessions of guilt made by the petitioners out of court were legally obtained and that the trial court properly considered the same as evidence in fixing the death sentences. The opinion further holds that the petitioners had the assistance of counsel at and before the trial. The dissenting opinion by Mr. Justice Brown, however, follows the principles of law heretofore laid down by this Honorable Court.

IV.

Conceded Facts.

While, as the Supreme Court of the State of Florida says (R. 351-352), the evidence as to the method of obtaining the confessions is in hopeless conflict, the following facts are either conceded, admitted or not denied:

1. The trial court never formally appointed Attorneys Griffis and Mather to represent petitioners and the records nowhere show any such appointment.

2. Such assignment of counsel as was made was made over telephone and on the streets of Fort Lauderdale, Florida; and the petitioners knew nothing about it at the time the pleas were entered before the court. The trial judge did not know which two of your petitioners Attorney Mather was to represent and Mather never saw his clients until a few minutes before they were arraigned in court to plead to the indictments. He had no time to consult seasonably with his clients even if the court had told him whom he was to represent. Attorney Mather never knew these clients had confessed to the crime charged in the indictment until after they had pleaded guilty (R. 138). The confessions were obtained from the accused under such circumstances that they were rendered illegal and should never have been admitted in evidence against them.

3. The petitioners, ignorant youths, unaccustomed to court procedure, needed the assistance of the court and it was the inescapable duty of the court to safeguard their rights and liberties. Yet the court failed and refused to appoint any attorneys for them under such circumstances that they could definitely know who these attorneys were and be guided by their counsel. An appointment on the streets or over the telephone, out of open court, and out of the presence of the petitioners furnished them with no knowledge that any counsel had been appointed to protect their rights, liberties and persons. The record shows that the petitioners in entering these pleas of Guilty were without the benefit of counsel, they being unable to employ one and the court having failed to advise them of the appointment of competent counsel for them. Obviously after the pleas of Guilty were entered it was too late to advise petitioners

of this fact, for then nothing remains for the State to do except impose sentence. Even then these attorneys failed and refused to make a motion for a new trial and to permit the petitioners to withdraw their pleas of Guilty and enter pleas of Not Guilty, as is the usual practice in such cases. And that is all that petitioners have asked in their many appearances before the State courts and before this Court—to be permitted to withdraw their pleas of Guilty, improperly and inadvisedly entered, and to plead Not Guilty to the indictments herein and to be tried on the merits of the case.

4. Captain Williams, who is charged with most of the brutal treatment of the petitioners, resulting in their confessions and pleas of Guilty, could not be found to give testimony in the case at bar. When the Supreme Court of Florida had before it this same question in a previous trial of the issues here involved, it said (*Chambers et al. v. State of Florida*, 167 So. 697):

> "Even if the jury totally disbelieved the testimony of the petitioners, the testimony of Sheriff Walter Clark, and one or two of the other witnesses introduced by the state, was sufficient to show that these confessions were made only after such constantly repeated and persistent questioning and cross-questioning on the part of the officers and one J. T. Williams, a convict guard, at frequent intervals while they were in jail, over a period of about a week, and culminating in an all night questioning of the petitioners separately in succession throughout practically all of Saturday night, until confessions had been obtained from all of them, when they were all brought into a room in the jailer's quarters at 6:30 Sunday morning and made their confessions before the State Attorney, the officers, said J. T. Williams, and several disinterested outsiders, the confessions, in the form of questions and answers being taken down by the court reporter, and then typewritten.

"Under the principles laid down in Nickels *v.* State, 90 Fla. 659, 106 So. 479; Davis *v.* State, 90 Fla. 317, 105 So. 843; Deiterle *v.* State, 98 Fla. 739, 124 So. 47; Mathieu *v.* State, 101 Fla. 94, 133 So. 550, these confessions were not legally obtained."

At the time of that opinion the court had before it the testimony of Captain Williams. In the present trial the Sheriff of Broward County was unable to explain his absence. It is strange indeed that the Sheriff entrusted the petitioners in the care and custody of this man Williams for a week, permitting him to brutally beat and abuse them and force them into a confession of the crime, and yet, when the court, as in this case, is making an inquiry into the manner in which these confessions were obtained, the Sheriff can neither locate Williams upon subpoenas issued by the petitioners and the State, nor explain his absence nor deny in any way the grave charges heaped upon his agent.

ARGUMENT.

I.

The conviction of petitioners solely upon confessions and pleas of guilt extorted by violence and torture, both of which were obtained by officers and agents of the State of Florida while acting in their official capacities, is a denial of the equal protection and due process of the law guaranteed by the Fourteenth Amendment to the Constitution of the United States.

In discussing this question of law we have decided to abandon the testimony of the petitioners and rely solely upon the evidence adduced by the state's own witnesses to show that these confessions were illegally obtained and improperly introduced as evidence against these petitioners.

A. D. Marshall, the jailer, said that he was present on that Saturday night and did go and get the prisoners whenever the Sheriff told him and bring them up for questioning

(R. 306). They began questioning the petitioners along about 4 o'clock on Saturday afternoon. They took a recess about 6 o'clock (R. 306). Captain Williams was there all the time when questions were asked of the petitioners (R. 313-314).

Hon. Louis Maire, State's Attorney, testified that he was called over to the jail that Sunday morning about 2:30. He left the jail about 3 o'clock A. M., and got some sleep and came back again about 6:30 Sunday morning, when these confessions were signed (R. 265). Walter Woodward is corroborated at this point by Mr. Maire because Woodward says that Mr. Maire refused to accept his first story, the one that he told him in the office that morning about three o'clock. Maire tore his first story up and told Captain Williams that the story was no good and when they got something out of Woodward he would come back; that it was late and he had to go back and go to bed (R. 56).

Sheriff Clark's testimony shows, in substance, that these confessions were not freely and voluntarily given. When asked how many hours the defendants could have slept that night when the confessions were made, the Sheriff said:

> "Q. How many hours sleep did they have the opportunity to get that night?
>
> "A. They could have slept all night, except I would say three hours, two hours and a half or three hours.
>
> "Q. What was the reason for bringing them out and having them returned to the cell and then later bringing them out again?
>
> "A. Because I would question one of them, and he would tell me some story about where he was at on Saturday night, and put him back in the cell and check on that and find out that he wasn't there, he was telling me a lie about it, and then bring him out and we would question him again, I tell him I checked on the last story he told me, tell him I checked on it, and he would tell me a different story about where he was at and what he was doing on Saturday night" (R. 276).

Again the Sheriff says (R. 277) that during the night's questioning he would lie down and take a nap after having some sandwiches and coffee. It is highly significant that the officers charged with the questioning of these petitioners throughout the eight days before their confessions, and particularly on the last night when the alleged confessions were obtained, could not survive the ordeal without refreshment and rest and yet are eager to testify that the petitioners showed no signs of suffering from the ordeal despite the denial to them of the same opportunities for recovery. And the failure of the Sheriff to know what Captain Williams did to the petitioners in the way of brutal treatment on that fateful Saturday night may well be explained by the fact that the Sheriff was not with Williams all of the time, in that he was asleep (R. 277).

From the above and other evidence introduced by the state's own witnesses, it must be concluded, as the Supreme Court of Florida has heretofore concluded in this same cause (*Chambers et al.* v. *State of Florida*, 167 So. 697), that the confessions were not legally obtained. The present refusal of the Supreme Court of Florida to override the determination of a jury to the contrary, in view of its former unequivocal pronouncement, smacks soundly of a devotion to form rather than to substance in law, and of a willingness to sacrifice fundamental human rights upon the altar of cant.

It follows, of course, that if these confessions were obtained by duress and force, and that the petitioners were intimidated by threats and torture, the pleas of Guilty entered in open court immediately thereafter, and while still under the shadow of that force, have no greater validity than the confessions themselves.

> "There is another rule of law, and it has its foundation in justice, and that is, that when a confession has, in the first place, been made under illegal influences,

such influences will be presumed to continue and color all subsequent confessions, unless the contrary is clearly shown."

Coffee v. *State*, 25 Fla. 501, 511, 6 So. 493, 496.

Not only is there no evidence to the contrary to overcome this presumption, but there is ample evidence on the part of petitioners to show that the illegal influences persisted right down to the moment of the arraignment, the so-called "Captain" Williams threatening some of the petitioners with turning them over to lynchers if they changed their stories (R. 59).

The Supreme Court of Florida has repeatedly held that a plea of guilt entered under such circumstances should be set aside and a new trial granted.

". . . The motion to set aside the judgment and sentence of death and to withdraw the plea of guilty and enter a plea of not guilty and proceed to trial thereon at once may be treated either as an extraordinary application for new trial or as an application for writ of error *coram nobis;* our conclusion being that the judgment brought in question was void and could have been reached by either motion.

"The evidence as to whether the plea of guilty was entered through fear, duress, misunderstanding, or improper influence is about as conflicting as it is possible for it to be. This court is on record as holding that such a motion is one addressed to the sound discretion of the trial court but subject to review by the appellate court. Pope *v.* State, 56 Fla. 81, 47 So. 487, 16 Ann. Cas. 972.

"In the last cited case, we said in substance that the law favors trials on the merits and that a plea of guilty to a serious criminal charge should be freely and voluntarily made and entered by the accused without a semblance of coercion and without fear or duress of any kind. It is possible that the plea of guilty in this case was entered freely and voluntarily and without a sem-

blance of coercion but, when such a plea is entered as here by an ignorant young man charged with a capital offense and the evidence on that point is in hopeless conflict, it raises a very strong suspicion that some undue influence contributed to the plea. When such a case is duly presented, the better practice is to permit the plea of guilty to be withdrawn and proceed to trial on a proper plea. . . ."

Casey v. *State*, 156 So. 283.

See also, *Nickels* v. *State*, 86 Fla. 288, 99 So. 121.

The conclusion seems inevitable that the method of obtaining the confessions herein under discussion and the subsequent pleas of guilty, while petitioners were still under the influence of fear of further torture, and their use in the sentencing of the petitioners herein, all violate the fundamental principles of due process and have been repeatedly condemned by this Court as denying the protection guaranteed by the Constitution of the United States.

See:

Hopt v. *People of Utah*, 110 U. S. 574, 4 S. Ct. 202, 28 L. Ed. 262;

Sparf v. *U. S.*, 156 U. S. 51, 15 S. Ct. 273, 39 L. Ed. 343;

Pierce v. *U. S.*, 160 U. S. 355, 16 S. Ct. 321, 40 L. Ed. 454;

Brown et al., v. *Mississippi, supra;*

Moore v. *Dempsey, supra.*

II.

The failure to give petitioners opportunity to employ counsel of their own, and the appointment of counsel (if such there was) who failed to seasonably and properly consult with and advise petitioners of their rights in the premises and to adequately represent them in the proceedings below is a denial to the petitioners herein of the due process of the law guaranteed them and each of them by the Fourteenth Amendment to the Constitution of the United States.

In Florida the rule is well established that:

> "When a petitioner is brought to the bar for arraignment to inquire of the accused whether he had counsel to represent him, and if upon inquiry, it developed that he had no attorney and was unable to employ one to ask the accused whether he desired one to represent him. If he was unable to employ counsel and signified his desire to be represented by one, then it has been the practice for the Trial Judge to appoint some attorney to represent the accused. This practice is in accord with the letter and spirit of Section 11 of the Bill of Rights and Section 3969 of the General Statutes of Florida, 1906."
>
> *Cutts* v. *State of Fla.*, 45 Fla. 491.

This Court has stated the rule even more broadly:

> "In the light of the facts outlined in the forepart of this opinion—the ignorance and illiteracy of the defendants, their youth, the circumstances of public hostility, the imprisonment and the close surveillance of the defendants by the military forces, the fact that their friends and families were all in other states and communication with them necessarily difficult, and above all they stood in deadly peril of their lives—we think the time and opportunity to secure counsel was a clear denial of due process."
>
> *Powell* v. *Alabama*, 287 U. S. 45, 71 (1932).

Petitioners in this case have, we think, clearly shown that they had no opportunity to secure counsel. Immediately after their arrests, on May 14, 1933, in company with some thirty other Negroes, they were rushed to various jails, apparently for safekeeping from threatened mob violence, and were continuously questioned, beaten and mistreated for one week, without being allowed the benefit of counsel or communication with friends outside the jails.

It is conceded that Messrs. Mather and Griffis, the two lawyers assigned to represent the petitioners, were com-

municated with privately, one over the telephone and the other on the streets, and advised of their appointments. Petitioners were not asked by the court if they had or desired counsel of their own choosing. The assignment of counsel was not made in open court and at a time when counsel could be of assistance to petitioners at the arraignment and trials. No opportunity was provided for consultation with the accused to determine the advisability of procedure to be followed. In fact, Mr. Mather did not know that a confession had been made by his clients until after the plea of guilty had been entered (R. 192-193). Neither counsel appears to have known his client until the morning of the arraignment (R. 138, 192-193), and one of them was subsequently informed by the convict guard, Williams, who is accused of the brutal extortion of the alleged confessions, that one of his clients intended to change his plea of Not Guilty to Guilty (R. 139). Nowhere does the record show that either of these counsel made any attempt to object to the introduction of the so-called confessions, move to withdraw the pleas of guilty, or make any other of the obvious motions to protect their clients, despite the suspicious circumstances surrounding the trials, other than to make a perfunctory argument for leniency (R. 139).

The right to the assistance of counsel is of fundamental importance. Without it the ignorant, inexperienced accused is at grave disadvantage. When a trial court becomes so derelict of its duty as to substantially deny this right to the accused, and when the counsel, improperly appointed, fails and refuses to give to the accused such protection as he is capable of invoking then there has been a substantial denial of due process and the trial court has lost its jurisdiction and the entire proceedings are null and of no effect.

Johnson v. *Zerbst, supra.*

Conclusion.

Equal protection and due process under the law are the pillars upon which our democracy rests. A denial of these to the humblest of our citizens is a threat to the liberties of all. Lives and liberties must be taken only in accordance with those established modes of procedure which have been tried and tested by time. If the experience of our centuries of the common law has demonstrated that trial and conviction by honest testimony, openly arrived at, is better than and preferable to confessions extorted by the methods of the Inquisition and to decisions made in the Star Chamber, without benefit of counsel, then it is respectfully submitted that the questions raised in this petition call for the exercise by this court of its supervisory powers to the end that rights guaranteed under the Constitution of the United States and recognized by all civilized nations shall be preserved.

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(4315).